

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**DEXTER DARNELL JOHNSON,**

*Petitioner,*

v.

**BOBBY LUMPKIN,** Director,  
Texas Department of Criminal  
Justice, Correctional Institutions  
Division,

*Respondent.*

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CIVIL ACTION NO. 4:19-CV-03047

**DEATH PENALTY CASE**

**JOINT PROPOSED SCHEDULING ORDER**

Petitioner Dexter Darnell Johnson has an Amended Second or Successive Petition for Writ of Habeas Corpus pending before this Court. ECF No. 8. This Court has set an evidentiary hearing “on the question of whether [Patrick] McCann’s representation rendered Johnson’s *Atkins* claim previously unavailable and whether it entitles Johnson to equitable tolling.” ECF No. 18 at 25. That hearing is set for August 12, 2021. ECF No. 30. This Court granted Johnson’s request to depose his trial lawyers, Anthony Osso and Jim Leitner, and his initial federal habeas counsel, Mr. McCann. ECF No. 28 at 10. This Court further ordered the parties to submit a proposed scheduling order “laying out the specific dates for depositions, any briefing on those depositions, and requested hearings on pending motions, if any, prior to the evidentiary hearing.” ECF No. 30.

The parties submit this Joint Proposed Scheduling Order in response to that order. The parties have conferred and agreed to conduct the depositions the week of June 7, 2021, and counsel for Mr. Johnson has contacted the three deponents

regarding their availability that week. In light of that, the parties have agreed to the following:

1. The parties will depose Mr. Osso and Mr. Leitner on the afternoon of June 8, 2021, and depose Mr. McCann on June 9, 2021.
2. The parties shall submit an exhibit list, deposition designations, and exchange exhibits listed therein, fourteen (14) days before the pre-hearing conference, or by July 26, 2021.
3. The parties shall file any objections to the authenticity and admissibility of exhibits and/or deposition designations by August 2, 2021.
4. The parties may file a reply, if any, to objections by August 5, 2021.
5. A pre-hearing conference will be held on Monday, August 9, 2021, to hear any pending issues related to the depositions, address any evidentiary objections to the parties' exhibits, and resolve any other pending motions. If there are no pending motions or objections to be resolved, no pre-hearing conference will be held.
6. The evidentiary hearing will occur on August 12, 2021. Pursuant to this Court's prior ruling, Petitioner is only authorized to present testimony from Mr. McCann at that hearing.
7. The parties shall file post-hearing briefing within thirty (30) days after the transcript becomes available to the parties.<sup>1</sup>

A proposed order is attached.

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<sup>1</sup> In joining this proposed schedule, Respondent does not explicitly or implicitly agree that an evidentiary hearing may be properly held in this case, or that any evidence developed and/or presented at such a hearing may be considered by the Court.

Respectfully submitted,

JASON D. HAWKINS  
Federal Public Defender

/s/ Jeremy Schepers  
Jeremy Schepers  
Supervisor, Capital Habeas Unit

/s/ Jessica Graf  
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COUNSEL FOR RESPONDENT

**CERTIFICATE OF SERVICE**

I, Jessica Graf, certify that on April 22, 2021, a copy of the foregoing was filed in the CM/ECF system, which will serve all registered users in this case.

/s/ Jessica Graf  
Jessica Graf